

This letter discusses the low rate of tax applicable to medical appliances. See 86 Ill. Adm. Code 130.310. (This is a GIL).

December 17, 2001

Dear Xxxxx:

This letter is in response to your letter dated October 10, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

AAA is in the process of updating our sales tax records for the state of Illinois and would like to request an updated ruling from you regarding the sales tax requirements of our business in your state.

AAA is in the business of short-term rentals of durable medical equipment to aid in the care of patients. We rent to various locations in Illinois through an agent in your state. Most of our rentals are to hospitals and nursing homes, with occasional rentals to individuals. Some of these entities will be exempted from sales tax by nature. However, some will not. In the event they are not, we must know what is a taxable product and what is not.

We would like a written opinion from your department, specifically on the items we rent, so that we do not misinterpret the Illinois rules. In addition, please send us a copy of your Illinois Sales Tax Rules and Regulations.

Please send us a written determination regarding the sales tax requirements on the rentals of our equipment **and the delivery fees thereon.** Items we rent are as follows:

- Hospital beds
- Wheelchairs
- Patient Lift Systems
- Continuous Air Flow Mattresses
- Bed Trapeze
- Walkers
- Non-Powered Mattress Overlay
- Shower/Commode Chair (on wheels as a wheelchair)

In addition, we have occasional sales of commode pails, lift slings, etc.

If possible, please fax the determination to me as soon as possible and mail to the above address.

Thank you for your prompt response.

For your information, we have enclosed a copy of 86 Ill. Adm. Code 130.310 which are the Department's regulations governing Food, Drugs, Medicines and Medical Appliances. Those products that qualify as food, drugs, medicines and medical appliances are taxed at a low rate of 1%. Those that do not qualify for the low rate are taxed at the State rate of 6.25% plus applicable local taxes.

You will note that a medicine or drug is "any pill, powder, potion, salve, or other preparation intended by the manufacturer for human use and which purports on the label to have medicinal qualities." A medical appliance is "an item which is intended by its manufacturer for use in directly substituting for a malfunctioning part of the body." Diagnostic equipment is generally not deemed to be a medical appliance. Some supplies qualify for the low rate, while others do not. Insulin, urine testing materials, syringes, and needles used in treating diabetes in human beings qualify for the low rate.

Wheelchairs and walkers qualify for the low rate of tax. However, hospital beds, patient lift systems, continuous air flow mattresses, bed trapezes, non-powered mattress overlays, and shower/commode chairs do not generally qualify for the low rate. In order to qualify for the low rate of tax as a medical appliance, the item must directly substitute for a malfunctioning part of the body. These items do not meet this requirement.

We note that you rent many of the items on your list. Please note that the lessor of tangible personal property in Illinois under a true lease is considered to be the end user of the property to be leased. A copy of 86 Ill. Adm. Code 130.2010 concerning taxation of leases is enclosed for your review. As the end user of tangible personal property located in Illinois, the lessor incurs Use Tax on the lessor's cost price of the property. Since the lessor is considered the end user of the property and has paid the Use Tax, no Retailers' Occupation Tax is imposed upon the rental receipts and the lessee incurs no Use Tax liability. There is no sales tax imposed upon the delivery of tangible personal property for rent.

To prevent actual or likely multi-state taxation, Use tax does not apply to the use of tangible personal property which is acquired outside this State and caused to be brought into this State by a person who has already paid a tax in another state in respect to the purchase or use of such property, to the extent the amount of such tax was properly due and paid in the other state. See 86 Ill. Adm. Code 150.310(a)(3).

Sales of commode pails and lift slings are subject to Retailers' Occupation Tax. Since these items do not qualify as medical appliances, the 6.25% State rate applies when they are sold at retail.

Whether a retailer is subject to Illinois Retailers' Occupation Tax liability or is required to collect Illinois Use Tax from its Illinois customers depends upon the retailer's activities in Illinois.

An "Illinois Retailer" is one who either accepts purchase orders in the State of Illinois or maintains an inventory in Illinois and fills Illinois orders from that inventory. The Illinois Retailer is then liable for Retailers' Occupation Tax on gross receipts from sales and must collect the corresponding Use Tax incurred by the purchasers.

Another type of retailer is the retailer maintaining a place of business in Illinois. The definition of a "retailer maintaining a place of business in Illinois" is described in 86 Ill. Adm. Code 150.201(i), enclosed. This type of retailer is required to register with the State as an Illinois Use Tax collector. See 86 Ill. Adm. Code 150.801, enclosed. The retailer must collect and remit Use Tax to the State on behalf of the retailer's Illinois customers even though the retailer does not incur any Retailers' Occupation Tax liability.

The United States Supreme Court in *Quill Corp. v. North Dakota*, 112 S.Ct. 1904 (1992), set forth the current guidelines for determining what nexus requirements must be met before a person is properly subject to a state's tax law. The Supreme Court has set out a 2-prong test for nexus. The first prong is whether the Due Process Clause is satisfied. Due process will be satisfied if the person or entity purposely avails itself or himself of the benefits of an economic market in a forum state. *Quill* at 1910.

The second prong of the Supreme Court's nexus test requires that, if due process requirements have been satisfied, the person or entity must have physical presence in the forum state to satisfy the Commerce Clause. A physical presence is not limited to an office or other physical building. Under Illinois law, it also includes the presence of any agent or representative of the seller. The representative need not be a sales representative. Any type of physical presence in the State of Illinois, including the vendor's delivery and installation of his product on a repetitive basis, will trigger Use Tax collection responsibilities. Please refer to *Brown's Furniture, Inc. v. Zehnder*, 171 Ill.2d 410 (1996).

The final type of retailer is the out-of-State retailer that does not have sufficient nexus with Illinois to be required to submit to Illinois tax laws. A retailer in this situation does not incur Retailers' Occupation Tax on sales into Illinois and is not required to collect Use Tax on behalf of its Illinois customers. However, the retailer's Illinois customers will still incur Use Tax on the purchase of the out-of-State goods and have a duty to self-assess their Use Tax liability, and the customer must remit the amount directly to the State.

In general, the imposition of the various local sales taxes in Illinois takes effect when "selling" occurs in a jurisdiction imposing a tax. The Department's opinion is that the most important element of selling is the seller's acceptance of the purchase order. Consequently, if a purchase order is accepted in a jurisdiction that imposes a local tax, that tax will be incurred. See 86 Ill. Adm. Code 270.115(b), enclosed. The tax rate is fixed by the location of the seller, not the delivery location. The fact that the item being sold is shipped from out-of-State or from another Illinois location is immaterial for purposes of local taxes if the sale occurs through order acceptance in an Illinois jurisdiction imposing a local tax. For these transactions the local tax will be incurred.

If a purchase order is accepted outside the State, but the property being sold is located in an inventory of the retailer that is located in an Illinois jurisdiction that has imposed a local tax, then the location of the property at the time of sale will determine where the seller is engaged in business for the purpose of determining the imposition of applicable local sales taxes. In situations in which the retailer has nexus, but both the purchase order acceptance and the location of the property being purchased are outside the State of Illinois, such sales would only be subject to the Illinois Use Tax at the rate of 6.25%.

With regard to delivery charges, we have enclosed a copy of 86 Ill. Adm. Code 130.415. As you can see from the regulation, transportation and delivery charges, also designated as shipping and handling charges, are not taxable if it can be shown that the charges are separately contracted

for and the charges are actually reflective of the costs of shipping. To the extent the transportation and delivery charges exceed the costs of shipping, the charges will be subject to tax.

Delivery charges are deemed to be agreed upon separately from the selling price of the tangible personal property being sold so long as the seller requires a separate charge for delivery and so long as the charges designated as transportation or delivery or shipping and handling are actually reflective of the costs of such shipping transportation or delivery. See 86 Ill. Adm. Code 130.415(d).

If, however, the transportation and delivery charges are included in the selling price of the property sold, then the charges are an element of the cost to the seller and are not deducted by the seller when computing Retailers' Occupation Tax liability. See 86 Ill. Adm. Code 130.415(c). Furthermore, transportation or delivery charges that are incurred by the seller in acquiring tangible personal property for sale are merely costs of doing business and are also not deductible when computing the seller's Retailers' Occupation Tax liability, regardless of the fact that the seller passes such costs on to the customer by quoting and billing such costs separately from the selling price of the property being sold. See Section 130.415(e).

Please note that the above discussion of delivery charges applies to sales at retail. Under a true lease, delivery charges are not taxable to the lessee.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Martha P. Mote
Associate Counsel

MPM:msk
Enc.